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No. 741

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1961.

ELMER C. ADAMS, SR., and ADAMS DAIRY COMPANY,
ELMER C. ADAMS, JR., and ADAMS DAIRY, INC.,
Petitioners,

vs.

FEDERAL TRADE COMMISSION,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

Petitioners, Elmer C. Adams, Sr., and Adams Dairy Company, Elmer C. Adams, Jr., and Adams Dairy, Inc., pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Eighth Circuit, entered in the above-entitled case on November 24, 1961.

OPINIONS BELOW.

The opinion and order of the District Court dated March 27, 1961 (R. 58-71)[1], is unreported and is printed in Appendix C hereto, *infra*, pp. A4-A19. The opinion of the Circuit Court of Appeals, printed in Appendix C hereto, *infra*, pp. A22-A39, is reported in 296 F.2d 861.

JURISDICTION.

The judgment of the Circuit Court of Appeals was entered on November 24, 1961. C.A. 23; p. A22, *infra*. The jurisdiction of this Court is invoked under 28 U.S.C., Section 1254 (1).

QUESTION PRESENTED.

The respondent, Federal Trade Commission, instituted administrative subpoena enforcement proceedings, in the United States District Court. Petitioners challenged the validity of the subpoenas sought to be enforced upon the ground that the several administrative complaints pursuant to which said subpoenas were issued did not constitute lawful notice upon which proceedings before the Federal Trade Commission might be predicated or process

1. The Record herein, as prepared by the Clerk of the Court of Appeals, consists of the printed Record and Supplemental Record in the Court of Appeals, together with the Record of Proceedings in the Court of Appeals. Since the page numbering does not run consecutively, for the sake of clarity page references to the Record will be referred to as "R. "; page references to the Supplemental Record will be referred to as "S.R. "; and page references to the Record of Proceedings in the Court of Appeals will be referred to as "C.A. "

issued. The District Court held that it was without jurisdiction to determine the question of the sufficiency of the complaints upon which the process sought to be enforced was predicated. The Court of Appeals affirmed. C.A. 9, 22; Appendix C, *infra*, p. A30.

The sole question presented by this petition is whether the courts, in administrative subpoena enforcement proceedings instituted by the Federal Trade Commission, are vested with jurisdiction and authority to adjudicate the question as to the sufficiency of the complaints pursuant to which the subpoenas sought to be enforced were issued.

STATUTES INVOLVED.

The statutory provisions involved are Section 9 of the Federal Trade Commission Act, 38 Stat. 722, 15 U.S.C. §49, and Section 6(c) of the Administrative Procedure Act, 60 Stat. 240(c), 5 U.S.C. §1005(c). They are printed in Appendix A, *infra*, pp. A1-A2.

STATEMENT.

Pursuant to the provisions of the Federal Trade Commission Act (38 Stat. 717, 52 Stat. 111, 15 U.S.C. §§ 41 *et seq.*) the Federal Trade Commission, on September 24, 1959, issued complaints as follows (R. 6-11): In Commission Docket No. 7596 against Adams Dairy Company, Adams Dairy, Inc and The Kroger Company; in Commission Docket No. 7597 against Adams Dairy Company, Adams Dairy, Inc. and Safeway Stores, Inc.; and in Commission Docket No. 7598 against Adams Dairy Company, Adams Dairy, Inc. and The Great Atlantic and Pacific Tea Company, Inc. The complaints (R. 6-11) are similar, each alleging that petitioners, Adams Dairy Company and Adams Dairy, Inc.